

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:	§	
TINO FRANCISCO CALDERON, DBA	§	CASE NO.: 19-11240-HCM
CAYE SOUTH MANAGEMENT GROUP	§	
INC., DBA BOUT TIME 2, DBA BT2	§	CHAPTER 7
RAYMOND C. MCDERMETT	§	
DEBTOR(S)	§	
	§	
JPMORGAN CHASE BANK, NATIONAL	§	
ASSOCIATION, ITS ASSIGNEES AND/OR	§	
SUCCESSORS	§	
MOVANT	§	
VS.	§	
	§	
TINO FRANCISCO CALDERON DBA	§	
CAYE SOUTH MANAGEMENT GROUP	§	
INC. DBA BOUT TIME 2 DBA BT2,	§	
RAYMOND C. MCDERMETT, DEBTORS	§	
AND JOHN PATRICK LOWE, TRUSTEE	§	
RESPONDENTS	§	

**MOTION OF JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, ITS
ASSIGNEES AND/OR SUCCESSORS, FOR RELIEF FROM STAY OF AN ACT
AGAINST PROPERTY**

L. Rule 4001(a)(2) NOTICE

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within 14 days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, ITS ASSIGNEES AND/OR SUCCESSORS (hereinafter Movant), a secured creditor in the within case, and hereby moves this Court for relief from the automatic stay pursuant to 11 U.S.C. § 362(d), Bankruptcy Rules 4001 and 9014, L. Rules 4001, 9013 and 9014. The facts supporting this motion

are set forth in the Affidavit in Support of Motion for Relief from Automatic Stay (the “Affidavit”) being filed concurrently herewith. In further support thereof, Movant respectfully states as follows:

I. JURISDICTION

1. This Court has jurisdiction of the subject matter and parties pursuant to 28 U.S.C. §§ 157(a) and 1334.
2. The matter is a core proceeding in accordance with 28 U.S.C. §157(b)(2)(G).
3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II. FACTS

4. On 9/13/2019, Tino Francisco Calderon and Raymond C. McDermett, hereinafter referred to as the Debtor, whether one or more, filed a voluntary petition under Chapter 13 of the Bankruptcy Code, thereby initiating the above-styled bankruptcy proceeding. On 11/15/2019, the Debtor’s case was converted to one under Chapter 7 of the Bankruptcy Code. John Patrick Lowe is the duly appointed and acting trustee.

5. On 2/23/2018, RAYMOND C MCDERMETT AND TINO F CALDERON executed a Promissory Note, hereinafter referred to as the Note, in the original principal amount of \$100,000.00, payable to the order of JPMorgan Chase Bank, N.A., hereinafter referred to as the Loan. The Movant is an entity entitled to enforce the Note. Movant owns or otherwise holds the Note that either names the Movant as the payee or is indorsed to the Movant or indorsed in blank, or payable to bearer. A true and correct copy of the Note is attached to the Affidavit and incorporated herein for all purposes.

6. Concurrently with the execution of the Note, TINO F CALDERON, TRUSTEE OF THE MCDERMETT-CALDERON REVOCABLE LIVING TRUST, DATES DECEMBER 7, 2005, RAYMOND C MCDERMETT, TRUSTEE OF THE MCDERMETT-CALDERON

REVOCABLE LIVING TRUST, DATES DECEMBER 7, 2005, TINO F CALDERON AND RAYMOND C MCDERMETT executed a Deed of Trust, hereinafter referred to as the Security Instrument, securing payment of the Note and encumbering certain real property described as:

LOT 11, BLOCK 3, SHADY OAKS ESTATES, SECTION 4, PHASE 5, ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN CABINET CC, SLIDES 221-223, PLAT RECORDS, WILLIAMSON COUNTY, TEXAS

Also known as: 112 Roble Roja Dr, Georgetown, TX 78633 (the "Property").

The Security Instrument was duly recorded in the WILLIAMSON County Deed Records. A true and correct copy of the Security Instrument is attached to the Affidavit and incorporated herein for all purposes.

7. According to the Debtor's Schedule A, the estimated market value of the Property is \$597,176.00.

8. The Loan, which is an obligation owed to Movant, is in default as the monthly installment payments due and owing have not been made pursuant to the terms of the above-described Note.

9. As of 1/22/2020, the total unpaid principal balance of the Loan was approximately \$95,474.35.

10. As of 1/22/2020, the total amount of contractual payments due under the Loan is \$1,269.82 which consists of the following:

Number of Missed Payments	From	To	Monthly Payment Amount	Total Amounts Missed
1	09/25/2019	09/25/2019	\$542.26	\$542.26
3	10/25/2019	12/25/2019	\$242.52	\$727.56
Less partial payments (suspense balance):				\$0.00

Total:	\$1,269.82
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11. A true and correct copy of a contractual payment history is attached to the Affidavit and incorporated herein for all purposes.

III. RELIEF REQUESTED

12. Movant requests that the Honorable Court terminate the automatic stay for cause pursuant to 11 U.S.C. § 362(d) to allow Movant to exercise all of its rights and remedies against the Debtor under state law, including, inter alia, foreclosing its lien on the Property. Good cause exists for the lifting of the automatic stay, as this is a chapter 7 case the Property is not necessary for an effective reorganization.

13. In the alternative, Movant alleges that cause exists for the lifting of the stay in that the Debtor has not offered Movant adequate protection for its interest in the Property. As such, cause exists for the lifting of the stay.

14. It has been necessary for Movant to hire the law firm of McCarthy & Holthus, LLP to file this motion. Movant reserves all rights to seek reimbursement of reasonable attorneys' fees incurred in enforcing its rights as a secured creditor to the extent allowed by the Bankruptcy Code and otherwise applicable law.

15. Movant requests that an Order granting its motion for relief from automatic stay, if such Order should be entered, will be effective immediately upon entry and, pursuant to Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure, enforcement of such Order will not be stayed until the expiration of fourteen (14) days after entry of the Order.

WHEREFORE, PREMISES CONSIDERED, Movant prays that the Court enter an Order granting relief from the automatic stay pursuant to 11 U.S.C. §362(d) as follows:

A. To allow Movant to exercise and enforce all its rights and remedies against the Debtor as a secured creditor and perfected lienholder to the Property, including, but not limited to, foreclosure and disposition of the Property, under applicable state law and, payment of costs, expenses, and reasonable attorneys' fees in accordance with the terms of the Note and Security Instrument and related loan documents and to the extent allowed by the Bankruptcy Code and otherwise applicable law;

B. That the Order be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code;

C. That the Order be binding and effective immediately upon entry such that the 14-day stay prescribed by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be waived; and

D. For such other relief to which Movant may show itself justly entitled, either at law or in equity.

Dated: February 7, 2020

Respectfully Submitted,
McCARTHY & HOLTHUS, LLP

/s/ Carlos Hernandez-Vivoni
Cole Patton SBN 24037247
Yoshie Valadez SBN 24091142
Carlos Hernandez-Vivoni SBN 24096186
Robert Brandon Hakari SBN 24107552
MHTbankruptcy@mccarthyholthus.com
1255 West 15th Street Suite 1060
Plano, TX 75075
Phone: (214) 291-3800
Fax: (214) 291-3801
Atty File No.: TX-19-21400
ATTORNEYS FOR MOVANT

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Relief was served on all parties listed below in the manner listed below on 2/7/2020.

By First Class Mail Postage Prepaid:

DEBTOR(S)

Tino Francisco Calderon
112 Roble Roja Drive
Georgetown, TX 78633

Raymond C. McDermott
112 Roble Roja Drive
Georgetown, TX 78633

HomeBridge Financial Services
Attn: Attn: Bankruptcy
194 Wood Avenue South, Ninth Floor
Iselin, NJ 08830

Williamson County Appraisal District
625 FM 1460
Georgetown, TX 78626

By CM/ECF:

COUNSEL FOR DEBTOR(S)

Christy Lingafelter Heimer
Heimer Law Offices PC
6633 E Highway 290
Suite 205
Austin, TX 78723

TRUSTEE

John Patrick Lowe
2402 East Main Street
Uvalde, TX 78801

All Parties Requesting Notice Via CM/ECF System

MCCARTHY & HOLTHUS, LLP

/s/ Carlos Hernandez-Vivoni

Carlos Hernandez-Vivoni
Atty file no.: TX-19-21400